

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Estate of

JEAN C. GOODFELLOW,

Deceased.

ALEC GOODFELLOW,

Appellant,

v.

U.S. BANK NATIONAL ASSOCIATION, as
Personal Representative of the Estate of Jean
C. Goodfellow,

Respondent.

No. 33594-8-II

UNPUBLISHED OPINION

BRIDGEWATER, J. — Alec Goodfellow, one of two heirs, appeals a judgment that U.S. Bank did not breach its fiduciary duty as the personal representative for Jean C. Goodfellow, Alec's mother. We hold that the trial court did not err in concluding that U.S. Bank did not breach its fiduciary duty. We also hold that the trial court did not abuse its discretion in awarding attorney fees and costs, which were incurred by U.S. bank in its administration of the estate and

reimbursed from the estate. We affirm.

FACTS

Jean Goodfellow died in September 1998. In her will, she named her son, Alec Goodfellow, and her daughter, Beth Goodfellow, as beneficiaries. She appointed U.S. Bank of Washington as her personal representative and directed that U.S. Bank “shall have unrestricted nonintervention powers to settle my estate in the manner set forth in this Will.” Ex. 8 at 2. Furthermore, in paragraph 2.2 of the will, she directed that U.S. Bank:

shall have full power, authority, and discretion to do all that may seem necessary or desirable to my Personal Representative in administering my estate including, without limitation, the authority at any time to make interim distributions of principal to those who are to receive the principal of my estate, and distribute all or any part of the income from the assets of my estate to or for the use of the beneficiaries of my estate in accordance with their respective interest; provided, that nothing contained in this clause shall require my Personal Representative to make any such distribution of principal or income.

Ex. 8 at 2.

With respect to her personal property, in paragraph 3.1 of the will, Mrs. Goodfellow directed U.S. Bank:

to make distribution of the items of tangible personal property as directed in the document. If I do not have such a writing in effect at the time of my death, or with regard to any items of personal property not specifically mentioned in the writing, distribution of said personal property shall be made to my children who are living at the time of my death, in equal shares, or if one of my children is deceased, then to the survivor of them. If any articles of personal property pass to more than one child of mine, such children shall have ninety (90) days from the date of my death to divide such property among themselves. If such children do not agree among themselves as to a division within said period, or if any child of mine is unable to make such a choice because he or she is under a legal disability, I give my Personal Representative authority to make an equitable division of such articles among such children. If there are articles of tangible personal property which the Personal

Representative considers unsuitable for distribution, those articles may be sold and the proceeds added to my residuary estate.

Ex. 8 at 2-3.

In addition, upon Mrs. Goodfellow's death, her late husband's trust was to be divided into two trusts, one for Alec and one for Beth. U.S. Bank also served as trustee for these trusts.

Following their mother's death, Alec and Beth requested that U.S. Bank manage their trusts to maximize income. In response, U.S. Bank explained that the Goodfellow family home was the largest trust asset and that selling the family home would increase their trusts' income generating capability.

During this time, Beth and a family friend were living in the family home. Unable to reach an agreement with Beth as to when U.S. Bank would sell the family home, U.S. Bank asked Beth to pay rent for her continued occupancy of the family home.

But Alec and Beth balked at this request. Alec responded:

I have never asked [U.S. Bank] or anyone to kick Beth out of the house nor will I.
My position is and always has been that Beth is welcome to stay in the house as long as it's a viable option and her staying there does not effect any decision for putting the home on the market for getting the best price for the house.

Ex. 10.

U.S. Bank defended its request, stating that "[we] explained to her that both you and she were in need of income, that it was going to take a long time to market the property, especially if the desire is to try to obtain twice the appraised value." Ex. 11. U.S. Bank continued:

Beth indicated that her understanding was that the trusts are for both your benefit and that you both were in agreement that she could stay in the house until

July. I said that I was not hearing that from you, but that if you both signed a letter agreeing to a later date, with the understanding that the income in the trusts would likely continue to be limited by the inability to invest the proceeds sooner, that we would certainly honor that for some reasonable period of time.

Ex. 11.

Shortly thereafter, Alec and Beth retained an attorney, who asked U.S. Bank to resign as trustee and personal representative. The attorney stated, “My clients would like the bank to agree to resign as both Executor of the Estate of Jean Goodfellow and as Trustee of the Testamentary Trust of Harry S. Goodfellow.” Ex. 13 at 3. On May 3, 1999, U.S. Bank responded:

This letter will confirm our conversation today regarding the resignation of U.S. Bank as Personal Representative of the Estate of Jean R. Goodfellow. My understanding is that you will split the draft nonjudicial dispute resolution agreement into a separate agreement for the estate and for the Harry S. Goodfellow T/U/W. This will permit us to transfer the trust in the near future while several pending matters are cleared up in the estate.

Ex. 27. On June 8, 1999, U.S. Bank resigned as trustee; Northwestern Trust became the successor trustee.

In the meantime, U.S. Bank had received permission from Alec, Beth, and their attorney to distribute the estate’s charitable bequests. And by late 1999, U.S. Bank had distributed the estate’s securities and real property. But U.S. Bank had not distributed the estate’s personal property.

In March 2000, Northwestern Trust notified Alec and Beth that the family home had been sold. Near the end of the month, Alec rented a U-Haul truck and moved much of the estate’s personal property out of the family home. While Alec placed some of this personal property in

storage, he placed some of the more valuable personal property in his home. Sometime after March 2000, Beth moved the remaining personal property to her newly constructed home.

Alec and Beth never notified U.S. Bank that the family home had been sold, that they needed to move the personal property, or that they had agreed to a division of the estate's personal property. On the other hand, U.S. Bank never checked with Alec and Beth to see if the family home had been sold and never checked on the status of the estate's personal property during this time.

In January 2001, fire destroyed Alec's home and most of the personal property he had taken from the estate. Alec had no homeowner's insurance.

U.S. Bank had no knowledge of this fire until May 2001, when another of Alec's attorneys wrote U.S. Bank:

In January of this year Mr. Goodfellow's residence and all of its contents were destroyed by a fire. All financial and other records were also destroyed, along with valuable paintings and art work. As you know, it will be necessary to establish the amount of the casualty loss for federal income tax purposes. You can assist me in this matter by providing information relating to the estate.

Ex. 20.

In July 2001, U.S. Bank asked Alec and Beth: (1) to acknowledge that U.S. Bank had distributed the estate's personal property and (2) to release and discharge U.S. Bank as personal representative of the estate. Alec and Beth did not sign the documents.

Approximately three years later, with the advice of his accountant and attorneys, Alec filed his 2001 tax return and claimed a casualty loss for the personal property that he had removed and

not insured, and that the fire had destroyed.

In December 2004, Alec filed a petition directing U.S. Bank to show cause why it should not be removed as personal representative. The parties stipulated that they would exclude the issue of proving the value of the property destroyed by the fire until a neutral third party could make that determination. The trial court denied Alec's petition, approved U.S. Bank's Final Report, and granted U.S. Bank's Petition for Decree of Distribution and Order of Discharge.¹

ANALYSIS

I. Standard of Review

Neither U.S. Bank nor Alec disputes any findings of fact. Thus, the findings of fact are verities on appeal. *Bennett v. Brandrud Mfg. Co.*, 1 Wn. App. 183, 184, 459 P.2d 977 (1969). This court is left to review de novo the questions of law and the conclusions of law. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003). We determine whether the findings of fact in turn support the conclusions of law and judgment. *Ridgeview Props. v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982).

II. Interpretation of the Will

Alec argues that the trial court erred in interpreting Mrs. Goodfellow's will. The trial court concluded the following:

1. Ms. Goodfellow's Will provides that the personal property contents of her home were to be distributed, if possible, pursuant to an agreed division of the personal property between her two adult children. The Will provided that these adult children were to have 90 days from the date of her death to try to reach agreement on division of the personal property. If they could not agree, then U.S.

¹ U.S. Bank signed this Final Report and Petition for Decree of Distribution and Order of Discharge in April 2005.

Bank was authorized to effectuate an equitable division of the personal property contents. However, the Will does not mandate that U.S. Bank impose an equitable division at the end of the 90 day period nor does it preclude the adult children from reaching an agreed division at some later date.

CP at 797-98. By misinterpreting her will, Alec argues that the “trial court failed to give effect to Jean Goodfellow’s intent by concluding that U.S. Bank had no duty to make distribution if the legatees did not.” Br. of Appellant at 14.

Our paramount duty in construing a will is to give effect to the testator’s intent. *In re Estate of Riemcke*, 80 Wn.2d 722, 728, 497 P.2d 1319 (1972). We are bound to construe a will to accomplish the testator’s intention, if we can gather that intention from everything contained within the four corners of the will. *In re Estate of Lee*, 49 Wn.2d 254, 260, 299 P.2d 1066 (1956). When we are faced with two possible constructions, one that will accomplish the testator’s intention and one that will not accomplish the testator’s intention, we will adopt the former construction. *Lee*, 49 Wn.2d at 260.

Alec claims that paragraph 3.1 of the will gives the beneficiaries three options: (1) accept equal distribution of the estate’s personal property by U.S. Bank; (2) agree to a division of the estate’s personal property within 90 days after the testator’s death; or (3) if the beneficiaries cannot agree to a division within 90 days, then U.S. Bank will equitably divide the estate’s personal property. He argues that the last option:

simply grants the personal representative more leeway to use its best judgment and make “equitable” rather than “equal” distribution. It goes against common sense and the plain language of the Will to say that the personal representative is directed to distribute the property, but if the beneficiaries fail to come to an agreement in 90 days, then the personal representative is relieved of its duty to distribute the property. . . . Nothing in the Will relieved U.S. Bank of its duty to make

distribution of the property after the 90 day period elapsed.

Br. of Appellant at 16.

Alec concedes that U.S. Bank was not required to impose its equitable distribution on the 91st day after Mrs. Goodfellow's death. Nevertheless, Alec contends that U.S. Bank "cannot escape its responsibility by rewriting the Will to extend the 90 day period ad infinitum, thereby relieving itself forever of a duty to administer assets of the estate." Reply Br. of Appellant at 3.

On the other hand, U.S. Bank argues that Alec's reading of the will is inconsistent and grossly impractical. U.S. Bank argues that the will clearly intended to vest as much discretion as possible in the personal representative. U.S. Bank suggests that "the last thing family members of the deceased want is for U.S. Bank to come in and appear to push the family members into some division of the decedent's personal property." Br. of Resp't at 22, n.13. According to U.S. Bank, the will did not require it to make an equitable division of the estate's personal property either before or immediately after 90 days had passed from Mrs. Goodfellow's death.

Finally, U.S. Bank argues that paragraph 3.1 of the will actually provided "a safety valve in the event the decedent's adult children were locked in a squabble over the division of her tangible personal property. . . . This was quite clearly Jean Goodfellow's intent and thus the proper application of the will's terms." Br. of Resp't at 24. Because the use and division of the estate's personal property was never a source of controversy or dispute between Alec and Beth, U.S. Bank argues it did not need to intervene. We agree.

Here, the trial court's written and oral findings of facts support its conclusions of law: (1)

Alec took the items he wanted from the family home on March 24; (2) although Beth was upset initially with what personal property he left her, she indicated that she probably ended up with at least half of it by value; (3) Beth gifted some of the personal property after the division; (4) Alec attempted to take a casualty loss for the personal property destroyed in his home by fire; and (5) neither Alec nor Beth notified U.S. Bank about the division, movement, storage, and partial destruction of the personal property until May 2001, almost a year after the division. These facts militate against Alec's position that U.S. Bank needed to interfere and force a distribution. And, if there was a distribution between the heirs, then U.S. bank was not required to maintain insurance on the personal property of the estate.

Therefore, the trial court did not err in making the following, pertinent conclusions of law:

2. In the instance of a nonintervention probate there is no specific formality that is required to complete a distribution of personal property.

3. The agreed division, and therefore the distribution, of the personal property contents of Ms. Goodfellow's home occurred on March 24, 2000 when Alexander Goodfellow and Elizabeth Goodfellow divided the personal property contents of the home and Alexander Goodfellow moved that portion of the contents that he wanted to his home and to a commercial storage locker.

4. After March 24, 2000, U.S. Bank, as personal representative of the Jean C. Goodfellow estate, no longer had responsibility for the personal property contents of Ms. Goodfellow's home since these assets had been distributed to the adult children pursuant to the agreed division of the property on that date.

5. While U.S. Bank had an obligation to insure estate assets during its administration of those assets, this obligation ended with the distribution of the assets and, therefore, U.S. Bank had no obligation to insure the personal property contents of Ms. Goodfellow's home at the time of Alexander Goodfellow's house fire on January 6, 2001 and no financial responsibility for these assets.

6. Similarly, in the case of the other alleged fiduciary duty breaches by U.S. Bank, if breaches did occur, they did not result in any harm or loss to the estate and, therefore, are not a basis for removal of U.S. Bank as personal representative or restriction of its non-intervention powers.

7. The estate has been fully administered and is ready to be closed.

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The Personal Representative should be discharged from any further administration of this estate and the estate closed.

CP at 798.

Thus, the findings of fact in turn support these conclusions of law. The trial court did not err.

II. Attorney Fees and Costs

Alec contends that the trial court erred in allowing U.S. Bank attorneys to be compensated from the estate for attorney fees and costs in the administration of the estate. Presumably, Alec is arguing that the trial court erred in applying RCW 11.48.210.²

In part, RCW 11.48.210 states, “An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable.” Our Supreme Court has stated, “Attorneys’ fees allowed executors or administrators of an estate are largely within the discretion of the trial court and will not be disturbed in the absence of an abuse of that discretion.” *In re Estate of Krueger*, 11 Wn.2d 329, 352, 119 P.2d 312 (1941); *see also In re Estate of Novolich*, 7 Wn. App. 495, 503, 500 P.2d 1297 (1972). And, in fixing such compensation, a court is to consider:

“ . . . the amount and nature of the services rendered, the time required in performing them, the diligence with which they have been executed, the value of the estate, the novelty and difficulty of the legal questions involved, the skill and training required in handling them, the good faith in which the various legal steps in connection with the administration were taken, and all other matters which would aid the court in arriving at a fair and just allowance.”

In re Estate of Bailey, 56 Wn.2d 623, 627, 354 P.2d 920 (1960) (quoting *In re Estate of Peterson*, 12 Wn.2d 686, 728, 123 P.2d 733 (1942)).

² Nevertheless, Alec correctly notes that the trial court did not award attorney fees to U.S. Bank in this dispute.

At issue here are the attorney fees and costs incurred by U.S. bank in its administration of the estate and reimbursed from the estate. RCW 11.48.210 clearly authorizes payment of reasonable compensation out of the estate to attorneys who provide services to the estate at the instance of the personal representative. Alec disputes U.S. Bank's compensation, but he has not shown that the trial court erred in fixing such compensation. And, as U.S. Bank correctly notes, Alec has not alleged that U.S. Bank's compensation was unreasonable or excessive. Furthermore, Alec has presented no evidence that U.S. Bank incurred any of these attorney fees and costs for legal services related to this litigation or that any of these attorney fees and costs are unrelated to the administrative steps necessary to close the estate. In fact, U.S. Bank has not asserted a claim for attorney fees and costs associated with this litigation involving Alec's claims.³

Thus, we hold that the trial court did not abuse its discretion in fixing U.S. Bank's compensation as a personal representative in the administration of the estate. Because we have held that U.S. Bank did not breach its fiduciary duty, neither Alec, as a beneficiary, nor the estate sustained any loss from U.S. Bank's actions or omissions. Alec is not entitled to an award of attorney fees, either from the trial or on appeal.

³ Although U.S. Bank expended approximately in defending this action, U.S. Bank has not sought reimbursement from the estate in any manner.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Hunt, J.

Van Deren, A.C.J.